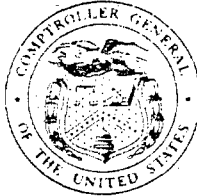


Donahue  
PL II, 14691

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-199497

DATE: August 22, 1980

MATTER OF: National Reporting Company

DIGEST: [Contract Award Protest]

1. Submission of possible below-cost bid is not valid basis upon which to challenge award to firm that has been determined responsible.
2. Alleged anti-trust violations are for consideration by Department of Justice, not GAO.
3. GAO will not review protests of affirmative determinations of responsibility except in certain cases which are not applicable here.

National Reporting Company (National) protests the award of a contract for verbatim reporting to Alderson Reporting Company (Alderson) by the United States Tax Court. National contends that Alderson's bid was so low that the firm will lose money and constitutes an attempt by National to unfairly eliminate competition. Also, National contends that Alderson does not have the trained personnel or equipment necessary to comply with the requirements of the contract.

Acceptance of unreasonably low or even below-cost bids by the Government is not illegal and, therefore, the possibility of a "buy-in" does not provide a basis upon which an award may be challenged if, as in this case, the procuring activity has not made a determination of nonresponsibility. It is, however, the contracting officer's duty to see that amounts excluded in the development of the original contract price are

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not recovered in the pricing of change orders or of follow-on contracts. Northwestern State University of Louisiana, B-196104, October 15, 1979, 79-2 CPD 256. Thus, submission of a below-cost bid is not a valid basis upon which to challenge an award to a responsible firm. American Drafting and Laminating Co., Inc., B-194015, March 7, 1979, 79-1 CPD 165. Furthermore, insofar as the protest is based on possible anti-trust violations, we will not consider such arguments since those matters are appropriately for consideration by the Department of Justice. Mars Signal Light Company, B-193942, March 7, 1979, 79-1 CPD 164.

The question of whether Alderson has the trained personnel or equipment necessary to meet the requirements for executing the contract is a challenge to the contracting officer's affirmative determination of responsibility which our Office does not review unless either fraud on the part of procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Richy's Prototype Sheetmetal, B-198092, March 31, 1980, 80-1 CPD 241. Neither exception applies here.

The protest is summarily denied in part and dismissed in part.

*Harry K. Van Cleave*

For the Comptroller General  
of the United States